

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

NOVEMBER 22, 2005

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on November 22, 2005.

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P-R-O-C-E-E-D-I-N-G-S

1:08 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me welcome you all to our afternoon session of the 22<sup>nd</sup> of November 2005. What is possibly not on the schedule that you have picked up today in the hearing room is a Special Public Meeting that we have set for this afternoon. I'm going to call that to order. It will take us very little time. We have essentially an administrative item to get through and then I will call the afternoon hearing for Case No. 17383.

With that I'm going to dispense with any openings for the Special Public Meeting and ask Mr. Moy and Ms. Bailey, and say a very good afternoon to them, if they would call the case for our attention.

MR. MOY: Yes, sir. Good afternoon, Mr. Chairman and Members of the Board. The first of the two cases for your attention is Application No. 17356. This is the application of Bannum, Inc. If the Board will recall on November 15, 2005 the Board convened and heard testimony on this application. The Board postponed or continued this application to December 20<sup>th</sup>.

In the interim, the Board also kept the

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1 record open for a filing, which is a motion on behalf  
2 of Regina James, for the Board to take up at its  
3 Special Public Meeting on November the 22<sup>nd</sup> and that  
4 is in your case file. And the office has received  
5 three motions on this filing and Exhibits, I believe,  
6 27, 28 and 29. Staff will conclude here unless --

7 CHAIRPERSON GRIFFIS: Excellent. Thank  
8 you very much, Mr. Moy, and you're absolutely right.  
9 Just one correction. Of course, we didn't hear  
10 testimony or get into the aspects of the appeal that  
11 was before us, but rather set the postponement  
12 schedule, the timing and the presentation.

13 The important aspect was that we had the  
14 motion and the request to intervene in the appeal and  
15 that was as put forth in Regina James. We had set  
16 this for today, Board Members, as you recall, because  
17 the representative was not clear on how they were  
18 moving to intervene, whether it was on behalf of the  
19 entire ANC or whether it was, in fact, by the  
20 individual.

21 We have the filing that we had asked for,  
22 noted a clarification of Regina James' motion to  
23 intervene. I will open it up for discussion from the  
24 Board and what is before us is whether we grant  
25 intervenor status or not.

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1 I am assuming, and I can be corrected,  
2 that this clarification is for an individual and the  
3 representation by Mr. Temple of Ms. Regina James as an  
4 intervenor and, therefore, we will need to establish  
5 whether she meets the threshold test to be established  
6 as the intervenor. The ANC, of course, is  
7 automatically an intervenor and participant in the  
8 appeal. I'll open it up for comment.

9 VICE CHAIR MILLER: Mr. Chairman, I just  
10 want to make reference to the regulation that we're  
11 operating under, which is 3106.3, which says that the  
12 Board should grant party status only if the person  
13 requesting party status has clearly demonstrated that  
14 the person's interest would likely be more  
15 significantly, distinctly or uniquely affected in  
16 character or kind by the proposed zoning relief than  
17 those of other persons in the general public.

18 My reading of the clarification of Regina  
19 James' motion to intervene is that she is asserting  
20 grounds for party status on two bases. One is that  
21 she was a former party appellant in the related case  
22 and, second, that she is an ANC commissioner.

23 CHAIRPERSON GRIFFIS: Agreed.

24 VICE CHAIR MILLER: Looking at the first  
25 grounds, she doesn't elaborate how having been a

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1 former party appellant makes her distinctly or  
2 uniquely affected in character or kind by the relief  
3 that is being sought in this case, as far as I can see  
4 in the pleadings, so we're left to speculate on that.

5 CHAIRPERSON GRIFFIS: Okay. I absolutely  
6 agree. In fact, each of them are tied in terms of  
7 participation and the ANC's concern. And for me the  
8 most direct sentence comes at the end of this, the  
9 second to last paragraph that says James "seeks by  
10 intervention to protect the ANC's interests consistent  
11 with your previous ruling."

12 Well, the ANC is a participant in the case  
13 and I'm not sure why that makes her uniquely in a  
14 situation to hold that level of elements of protecting  
15 the ANC's interests.

16 I take it, Ms. Miller, you are not  
17 supporting the granting of intervenor status. Is that  
18 correct?

19 VICE CHAIR MILLER: Well, that's correct,  
20 but I do want to just address her second reason, that  
21 she is an ANC commissioner for the affected area. Our  
22 regulations provide that the ANC of the affected area  
23 is a party as a matter-of-right so that there is no  
24 need for a motion to intervene to represent the ANC as  
25 a whole, and then the ANC would need to have

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1 authorization to participate.

2 So, for instance, if she was representing  
3 the ANC, then I think that we would need to see a  
4 resolution or something by the ANC saying that she was  
5 representing the ANC as a whole and it doesn't go to  
6 her affected Single Member District.

7 CHAIRPERSON GRIFFIS: Indeed.

8 VICE CHAIR MILLER: So, therefore, I would  
9 be opposed to granting her party status but, of  
10 course, the ANC, if properly authorized, does have  
11 party status as a matter-of-right.

12 CHAIRPERSON GRIFFIS: Good. Others'  
13 comments? Very well. Not having any other additional  
14 comments on that, I would move denial of the  
15 intervenor, the motion to intervene by Ms. Regina  
16 James, based on that which has been stated and the  
17 lack of proving the threshold requirements to  
18 establish her as an intervenor. I would ask for a  
19 second.

20 BOARD MEMBER MANN: Second.

21 CHAIRPERSON GRIFFIS: Thank you very much,  
22 Mr. Mann. Is there additional deliberation on the  
23 motion? Comments? Not noting any others then, we  
24 have a motion before us that has been seconded. I  
25 would ask for all those in favor to signify by saying

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1       aye.

2                   ALL:    Aye.

3                   CHAIRPERSON GRIFFIS:   And opposed?   Very  
4       well.   Why don't we record the vote on that motion?

5                   COMMISSIONER MITTEN:   I just want to be  
6       clear.   I'm not participating in this case.   I haven't  
7       been on it.

8                   CHAIRPERSON GRIFFIS:   Indeed.

9                   COMMISSIONER MITTEN:   Thank you.

10                  CHAIRPERSON GRIFFIS:   As we do the roll  
11       call, we will make sure that that is stated.

12                  MR. MOY:   Yes, thank you.   The staff would  
13       record the vote as 4-0-1.   This is on the motion to  
14       deny party status on the motion of the Chair, Mr.  
15       Griffis, seconded by Mr. Mann.   Also in support of the  
16       motion, Mr. Etherly and Ms. Miller, the Vice Chair.  
17       And we have a Zoning Commission Member not  
18       participating on this case.

19                  CHAIRPERSON GRIFFIS:   Excellent.   Thank  
20       you very much, Mr. Moy.   Just for clarification, I  
21       know you said in your opening of this case that we do  
22       have other filings, Exhibit 28 and Exhibit 29, not to  
23       mention we may have others.   Those are not taken up in  
24       this proceeding, a Special Public Meeting by the  
25       Board, but will be addressed appropriately at the

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1 convening of the appeal which I believe was stated as  
2 to be the 20<sup>th</sup> of December.

3 MR. MOY: That is correct, sir.

4 CHAIRPERSON GRIFFIS: Excellent.  
5 Therefore, we do have no other business in that case.  
6 Is that correct, Mr. Moy?

7 MR. MOY: We have one very quick one I  
8 believe, sir, which is --

9 CHAIRPERSON GRIFFIS: But not in Appeal  
10 No. 17356. We can close that and then let's move on  
11 to the next and absolutely to the next case. We have  
12 another quick decision on Application 17377 as we have  
13 a motion to reschedule our decision making. And let's  
14 take that up, Board Members, very quickly.

15 As you recall, we did hear this  
16 application, Jefferson LLC. The record was not left  
17 open for any additional information on it. We were  
18 not able to process it in terms of deliberation on the  
19 Bench based on the time. We are being requested to  
20 set a Special Public Meeting for that, and I would  
21 suggest that we do so for the next Tuesday which would  
22 be the 29<sup>th</sup> of November and move ahead with that  
23 unless there is any objection from participating Board  
24 Members.

25 VICE CHAIR MILLER: No objection.

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1 CHAIRPERSON GRIFFIS: Excellent. Not  
2 noting any voiced objection, we'll take it as a  
3 consensus to do that. Mr. Moy, why don't we make that  
4 be known. Also, given the case, we should let the ANC  
5 and other participants know of the change in schedule.

6 MR. MOY: Yes, sir. Staff will take care  
7 of that.

8 CHAIRPERSON GRIFFIS: Excellent. Thank  
9 you very much. Is there anything else for the Board's  
10 attention in this Special Public Meeting today?

11 MR. MOY: No, sir. That will conclude  
12 this session.

13 CHAIRPERSON GRIFFIS: Excellent. If that  
14 concludes then, why don't I conclude our Special  
15 Public Meeting.

16 (Whereupon, the Special Public Meeting was  
17 concluded at 1:17 p.m.)

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